Senate Bill No. 858

Passed the Senate October 8, 2010

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Secretary of the Senate

Passed the Assembly October 7, 2010

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Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of _____, 2010, at _____ o'clock ___ M.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 6453, 19138, and 23101 of, to amend and repeal Section 25136 of, to add Sections 6833, 9035, 11534, 17276.05, 17276.20, 17276.21, 17276.22, 24416.05, 24416.20, 24416.21, 24416.22, 30354.7, 32390, 38577, 40168, 41127.8, 43449, 45610, 46466, 50138.8, 55211, and 60495 to, to repeal Sections 17276, 17276.9, 17276.10, 24416, 24416.9, and 24416.10 of, and to repeal and add Sections 6452.1, 6487.3, and 18510 of, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 858, Committee on Budget and Fiscal Review. Sales and use taxes: income and corporation taxes: collection cost recovery fee.

(1) The Sales and Use Tax Law provides that every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer is liable for use tax, and must pay the use tax to the State Board of Equalization, unless that person has paid the use tax to a retailer registered to collect the tax. That law requires a person selling tangible personal property for storage, use, or other consumption in this state to register with, and to obtain a seller's permit or certification of registration-use tax from, the State Board of Equalization. For taxable years beginning on or after January 1, 2003, and on or before December 31, 2009, a person not otherwise registered with the board could make an irrevocable election to report qualified use tax, as defined, on that person's income tax return, and the Franchise Tax Board was required to revise the income tax returns to allow a person to report and remit qualified use tax to it and to remit the qualified use tax collected to the board.

This bill would authorize an eligible person to make an irrevocable election to report qualified use tax, as defined, on that person's income tax return, for taxable years beginning on and after January 1, 2010, and would require the Franchise Tax Board

to allow a person to report and remit qualified use taxes to it and to remit the qualified use taxes collected to the board, as provided.

(2) Existing law imposes a penalty on a taxpayer subject to the Corporation Tax Law with an understatement of tax, as defined, in excess of $1,000,000 in an amount equal to 20% of that understatement, except as specified.

This bill would, for each taxable year beginning on or after January 1, 2010, revise those provisions to impose a penalty for understatement of tax for each taxable year that exceeds the greater of $1,000,000 or 20% of the tax shown on an original return or shown on an amended return filed on or before the original or extended due date of the return for the taxable year, as provided.

(3) Existing law allows individual and corporate taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their individual and corporate tax liabilities. Existing law, for net operating losses incurred in taxable years beginning on or after January 1, 2008, provides a carryover period of 20 years and allows net operating losses attributable to taxable years beginning on or after January 1, 2011, to be carrybacks to each of the preceding 2 taxable years, as provided. Existing law disallows the deduction for net operating losses and net operating loss carryovers in the 2008 and 2009 taxable years for a taxpayer with business income of $500,000 or more and extends the carryover period for those net operating losses, thus allowing the taxpayer to have the same number of years to utilize the deduction as it would have had if the disallowance for 2008 and 2009 had not occurred.

This bill would extend the disallowance of the net operating loss deduction and carryovers, and the carryover extension, to the 2010 and 2011 taxable years for a taxpayer with income of $300,000 or more. This bill would disallow net operating loss carrybacks for any net operating losses attributable to taxable years beginning before January 1, 2013, but would allow net operating losses attributable to taxable years beginning on or after January 1, 2013, to be carrybacks to each of the preceding 2 taxable years, as provided. This bill would, under the Corporation Tax Law, specify that the above provisions do not apply to a taxpayer that ceased to do business or has a final taxable year ending prior to August 28, 2008, that sold or transferred substantially all of its assets resulting in a gain on sale during a taxable year ending prior to August 28,

2008, for which the gain could be offset with existing net operating loss deductions and the sale or transfer occurred pursuant to a reorganization under federal bankruptcy provisions. The bill would also specify that an amended tax return claiming net operating loss deductions allowed pursuant to those provisions shall be treated as a timely filed original return.

(4) The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. That law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to have that income apportioned in accordance with a single sales factor formula, except as provided, pursuant to an irrevocable annual election, as specified. That law also provides that sales of tangible and intangible personal property are in this state in accordance with specified criteria.

This bill would, for taxable years beginning or after January 1, 2011, revise provisions for determining whether sales of services and intangibles occur in this state for purposes of taxpayers who elect to have their business income apportioned in accordance with the single sales factor formula, as provided, and for purposes of the 4-factor formula if the single sales factor formula election is not allowed.

(5) Existing law requires the payment of taxes, fees, and surcharges that are administered by the State Board of Equalization under the provisions of the Sales and Use Tax Law, Use Fuel Tax Law, Private Railroad Car Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Act, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law, as prescribed.

This bill would require the payment of a collection cost recovery fee if a person fails to pay a tax, fee, or surcharge under the laws stated above, and the State Board of Equalization has mailed the person a demand notice, on or after January 1, 2011, that explains that the failure to pay the amount due may result in collection action, including the imposition of the collection cost recovery fee. This bill would authorize the collection cost recovery fee to be collected and deposited in the same manner in which the tax, fee, or surcharge that the person failed to pay is collected and deposited.

This bill would deposit the collection cost recovery fee in the same manner as the revenues derived from the tax, fee, or surcharge imposed by the laws stated above, which deposit those revenues into various funds, some of which are continuously appropriated. Because the bill would provide additional amounts payable from a continuously appropriated fund, the bill would make an appropriation.

(6) This bill would require the State Board of Equalization to relieve a person from paying the collection cost recovery fee if that person files a statement under penalty of perjury, setting forth the reasonable cause for not paying the tax, fee, or surcharge, to the State Board of Equalization. Because this bill would expand the scope of the existing crime of perjury, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(7) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 6452.1 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 6452.1 is added to the Revenue and Taxation Code, to read:

6452.1. (a) Notwithstanding Section 6451, every person that purchases tangible personal property, the storage, use, or other consumption of which is subject to qualified use tax, as defined in subdivision (d), that is otherwise required to report and remit that tax pursuant to this part, may elect to report and remit qualified use tax on an acceptable tax return.

(b) (1) A person that reports qualified use tax on an acceptable tax return is deemed to have made the election authorized by this section.

(2) (A) In the case of a married individual filing a separate California personal income tax return, an election may be made to report either one-half of the qualified use tax or the entire qualified use tax on his or her separate California personal income tax return.

(B) If an individual elects to report one-half of the qualified use tax, that election will not be binding with respect to the remaining one-half of the qualified use tax owed by that individual and that individual's spouse.

(c) An election to report qualified use tax on an acceptable tax return shall be irrevocable. An acceptable tax return that contains use tax shall be considered a tax return for purposes of this part.

(d) For purposes of this section:

(1) "Acceptable tax return" means a timely filed original return that is filed pursuant to Article 1 (commencing with Section 18501), Article 2 (commencing with Section 18601), Section 18633, Section 18633.5 of Chapter 2 (commencing with Section 18501) of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.

(2) (A) Except as provided in subparagraph (B), "qualified use tax" means the use tax imposed under this part, Section 35 of Article XIII of the California Constitution, in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) that has not been paid to a retailer holding a seller's permit or certificate of registration-use tax.

(B) "Qualified use tax" does not include:

(i) Use tax imposed on the storage, use, or other consumption of a mobilehome or a commercial coach that is required to be registered annually pursuant to the Health and Safety Code or use

tax that applies to a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.

(ii) Use tax imposed on the storage, use, or other consumption of a vehicle, vessel, or aircraft.

(iii) Use tax imposed on a lease of tangible personal property.

(iv) Use tax imposed on a purchase of cigarettes, tobacco products, or cigarettes and tobacco products for which the purchaser is registered with the board as a cigarette consumer, a tobacco products consumer, or a cigarette and tobacco products consumer.

(e) (1) If a person elects to report qualified use tax on an acceptable tax return, that person shall report and remit the qualified use tax by reporting the amount due based on all taxable purchases of tangible personal property made during the taxable year for which the acceptable tax return is required to be filed.

(2) The qualified use tax shall be reported on and remitted with an acceptable tax return that is required to be filed for the taxable year in which the liability for the qualified use tax was incurred.

(f) (1) The penalties and interest imposed under this part, in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) shall apply to use tax reported as qualified use tax on an acceptable return.

(2) Any claims for refunds or credits of any use tax reported as qualified use tax on an acceptable tax return shall be made in accordance with Chapter 7 (commencing with Section 6901) of this part.

(3) Qualified use tax shall be considered to be timely reported and remitted for purposes of this part, in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), and in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), if the qualified use tax is timely reported on and remitted with an acceptable tax return in accordance with the provisions of this section.

(g) Notwithstanding a person's payment of qualified use tax on an acceptable tax return, the board is not precluded from making any determinations for understatements of qualified use tax against that person in accordance with Part 5 (commencing with Section 6451).

(h) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under Part 10.2 (commencing with Section 18401).

(2) Qualified use tax reported on the acceptable tax return in accordance with this section.

(i) (1) This section does not apply to a person who is otherwise required to hold a seller's permit or to register with the State Board of Equalization pursuant to Part 1 (commencing with Section 6001) of this division.

(2) This section applies to purchases of tangible personal property made on or after January 1, 2010, in taxable years beginning on or after January 1, 2010.

SEC. 3. Section 6453 of the Revenue and Taxation Code is amended to read:

6453. For purposes of the sales tax, the return shall show the gross receipts of the seller during the preceding reporting period and, in the case of a person who is liable for the sales tax and is not a seller, the gross receipts of such person for the period in which the liability was incurred. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him or her, the storage, use, or consumption of which property became subject to the use tax during the preceding reporting period; in case of a return filed by a purchaser, except as provided in Section 6452.1, the return shall show the total sales price of the property purchased by him or her, the storage, use, or consumption of which became subject to the use tax during the preceding reporting period.

The return shall also show the amount of the taxes for the period covered by the return and any other information which the board deems necessary for the proper administration of this part.

SEC. 4. Section 6487.3 of the Revenue and Taxation Code is repealed.

SEC. 5. Section 6487.3 is added to the Revenue and Taxation Code, to read:

6487.3. (a) (1) For persons that elect to report qualified use tax in accordance with Section 6452.1, except in the case of fraud, intent to avoid this part or authorized rules and regulations issued by the board, or the gross understatement of qualified use taxes, every notice of a deficiency determination with respect to the qualified use tax shall be mailed within three years after the last day for which an acceptable tax return is due or filed, whichever occurs later.

(2) In the case of a gross understatement of qualified use tax, every notice of a deficiency determination with respect to the qualified use tax shall be mailed within six years after the last day for which an acceptable tax return is due or filed, whichever occurs later.

(3) For purposes of this subdivision a "gross understatement of qualified use tax" is a deficiency that is in excess of 25 percent of the amount of qualified use tax reported on a person's acceptable tax return. In the case of married individuals filing separate California personal income tax returns, the total amount of qualified use tax reported will be considered in determining whether there is a gross understatement of qualified use tax.

(4) For purposes of this section "acceptable tax return" means a timely filed original return that is filed pursuant to Article 1 (commencing with Section 18501), Article 2 (commencing with Section 18601), Section 18633, Section 18633.5 of Chapter 2 (commencing with Section 18501) of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.

(b) This section applies to reporting of purchases of tangible personal property made on or after January 1, 2010, in taxable years beginning on or after January 1, 2010.

SEC. 6. Section 6833 is added to the Revenue and Taxation Code, to read:

6833. (a) A collection cost recovery fee shall be imposed on any person that fails to pay an amount of tax, interest, penalty, or other amount due and payable under this part. The collection cost recovery fee shall be in an amount equal to the board's costs for collection, as reasonably determined by the board. The collection

cost recovery fee shall be imposed only if the board has mailed its demand notice, to that person for payment, that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

(b) Interest shall not accrue with respect to the collection cost recovery fee provided by this section.

(c) The collection cost recovery fee imposed pursuant to this section shall be collected in the same manner as the collection of any other tax imposed by this part.

(d) (1) If the board finds that a person's failure to pay any amount under this part is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the collection cost recovery fee provided by this section.

(2) Any person seeking to be relieved of the collection cost recovery fee shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief.

(e) Subdivision (a) shall be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

(f) Collection cost recovery fee revenues shall be deposited in the same manner as revenues derived from any other tax imposed by this part.

SEC. 7. Section 9035 is added to the Revenue and Taxation Code, to read:

9035. (a) A collection cost recovery fee shall be imposed on any person that fails to pay an amount of tax, interest, penalty, or other amount due and payable under this part. The collection cost recovery fee shall be in an amount equal to the board's costs for collection, as reasonably determined by the board. The collection cost recovery fee shall be imposed only if the board has mailed its demand notice, to that person for payment, that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

(b) Interest shall not accrue with respect to the collection cost recovery fee provided by this section.

(c) The collection cost recovery fee imposed pursuant to this section shall be collected in the same manner as the collection of any other tax imposed by this part.

(d) (1) If the board finds that a person's failure to pay any amount under this part is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the collection cost recovery fee provided by this section.

(2) Any person seeking to be relieved of the collection cost recovery fee shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief.

(e) Subdivision (a) shall be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

(f) Collection cost recovery fee revenues shall be deposited in the same manner as revenues derived from any other tax imposed by this part.

SEC. 8. Section 11534 is added to the Revenue and Taxation Code, to read:

11534. (a) A collection cost recovery fee shall be imposed on any person that fails to pay an amount of tax, interest, penalty, or other amount due and payable under this part. The collection cost recovery fee shall be in an amount equal to the board's costs for collection, as reasonably determined by the board. The collection cost recovery fee shall be imposed only if the board has mailed its demand notice, to that person for payment, that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

(b) Interest shall not accrue with respect to the collection cost recovery fee provided by this section.

(c) The collection cost recovery fee imposed pursuant to this section shall be collected in the same manner as the collection of any other tax imposed by this part.

(d) (1) If the board finds that a person's failure to pay any amount under this part is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the collection cost recovery fee provided by this section.

(2) Any person seeking to be relieved of the collection cost recovery fee shall file with the board a statement under penalty of

perjury setting forth the facts upon which the person bases the claim for relief.

(e) Subdivision (a) shall be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

(f) Collection cost recovery fee revenues shall be deposited in the same manner as revenues derived from any other tax imposed by this part.

SEC. 9. Section 17276 of the Revenue and Taxation Code is repealed.

SEC. 10. Section 17276.05 is added to the Revenue and Taxation Code, to read:

17276.05. (a) In addition to the modifications made by Section 17276, the deduction provided by Section 172 of the Internal Revenue Code, relating to net operating loss deduction, shall be modified as follows:

(1) Section 172(b)(1)(J) of the Internal Revenue Code, relating to certain losses attributable to federally declared disasters, shall not apply.

(2) Section 172(j) of the Internal Revenue Code, relating to rules relating to qualified disaster losses, shall not apply.

(b) This section shall be operative for taxable years beginning on or after January 1, 2011.

SEC. 11. Section 17276.9 of the Revenue and Taxation Code is repealed.

SEC. 12. Section 17276.10 of the Revenue and Taxation Code is repealed.

SEC. 13. Section 17276.20 is added to the Revenue and Taxation Code, to read:

17276.20. Except as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided by Section 172 of the Internal Revenue Code, relating to net operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to amount of carrybacks and carryovers, shall be modified so that the applicable percentage of the entire amount of the net

operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (d).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating

loss shall be carried forward to the taxable years specified in subdivision (d).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of that paragraph, paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, the term “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) Section 172(b)(1) of the Internal Revenue Code, relating to years to which the loss may be carried, is modified as follows:

(1) Net operating loss carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2013.

(2) A net operating loss attributable to taxable years beginning on or after January 1, 2013, shall be a net operating loss carryback to each of the two taxable years preceding the taxable year of the loss in lieu of the number of years provided therein.

(A) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, and before January 1, 2014, the amount of carryback to any taxable year shall not exceed 50 percent of the net operating loss.

(B) For a net operating loss attributable to a taxable year beginning on or after January 1, 2014, and before January 1, 2015, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.

(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2015, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.

(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the Internal Revenue Code, relating to special rules for REITs, and Section 172(b)(1)(E) of the Internal Revenue Code, relating to excess interest loss, and Section 172(h) of the Internal Revenue Code, relating to corporate equity reduction interest losses, shall apply as provided.

(4) A net operating loss carryback shall not be carried back to any taxable year beginning before January 1, 2011.

(d) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute "five taxable years" in lieu of "20 taxable years" except as otherwise provided in paragraphs (2) and (3).

(B) For a net operating loss for any taxable year beginning on or after January 1, 2000, and before January 1, 2008, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute "10 taxable years" in lieu of "20 taxable years."

(2) For any taxable year beginning before January 1, 2000, in the case of a "new business," the "five taxable years" in paragraph (1) shall be modified to read as follows:

(A) "Eight taxable years" for a net operating loss attributable to the first taxable year of that new business.

(B) "Seven taxable years" for a net operating loss attributable to the second taxable year of that new business.

(C) "Six taxable years" for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 17276.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a taxpayer that is under the jurisdiction of the court in a Title 11 or similar case at any time during the income year. The loss carryover provided in the preceding sentence shall not apply to any loss incurred after the date the taxpayer is no longer under the jurisdiction of the court in a Title 11 or similar case.

(e) For purposes of this section:

(1) "Eligible small business" means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year.

(2) Except as provided in subdivision (f), "new business" means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) "Title 11 or similar case" shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or "S" corporation paragraphs (1) and (2) shall be applied to the partnership or "S" corporation.

(f) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and

intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months ("prior trade or business activity"), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer's (or any related person's) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any

portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) "Related person" shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) "Acquire" shall include any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term "new business" shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) "Biopharmaceutical activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(g) In computing the modifications under Section 172(d)(2) of the Internal Revenue Code, relating to capital gains and losses of taxpayers other than corporations, the exclusion provided by Section 18152.5 shall not be allowed.

(h) Notwithstanding any provisions of this section to the contrary, a deduction shall be allowed to a "qualified taxpayer" as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7.

(i) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of

this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(j) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(k) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 14. Section 17276.21 is added to the Revenue and Taxation Code, to read:

17276.21. (a) Notwithstanding Sections 17276, 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, 17276.7, and 17276.20 of this code and Section 172 of the Internal Revenue Code, no net operating loss deduction shall be allowed for any taxable year beginning on or after January 1, 2008, and before January 1, 2012.

(b) For any net operating loss or carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:

(1) By one year, for losses incurred in taxable years beginning on or after January 1, 2010, and before January 1, 2011.

(2) By two years, for losses incurred in taxable years beginning on or after January 1, 2009, and before January 1, 2010.

(3) By three years, for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.

(4) By four years, for losses incurred in taxable years beginning before January 1, 2008.

(c) Notwithstanding subdivision (a), a net operating loss deduction shall be allowed for carryback of a net operating loss attributable to a taxable year beginning on or after January 1, 2013.

(d) The provisions of this section shall not apply to the following taxpayers:

(1) For any taxable year beginning on or after January 1, 2008, and before January 1, 2010, this section shall not apply to a taxpayer with net business income of less than five hundred thousand dollars ($500,000) for the taxable year. For purposes of this paragraph, business income means:

(A) Income from a trade or business, whether conducted by the taxpayer or by a passthrough entity owned directly or indirectly by the taxpayer. For purposes of this paragraph, the term "passthrough entity" means a partnership or an "S" corporation.

(B) Income from rental activity.

(C) Income attributable to a farming business.

(2) For any taxable year beginning on or after January 1, 2010, and before January 1, 2012, this section shall not apply to a taxpayer with modified adjusted gross income of less than three hundred thousand dollars ($300,000) for the taxable year. For purposes of this paragraph, "modified adjusted gross income" means the amount described in paragraph (2) of subdivision (h) of Section 17024.5, determined without regard to the deduction allowed under Section 172 of the Internal Revenue Code, relating to net operating loss deduction.

SEC. 15. Section 17276.22 is added to the Revenue and Taxation Code, to read:

17276.22. Notwithstanding Section 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss attributable to a taxable year beginning on or after January 1, 2008, shall be a net operating carryover to each of the 20 taxable years following the year of the loss, and a net operating loss attributable to a taxable year beginning on or after January 1, 2013, shall also be a net operating loss carryback to each of the two taxable years preceding the taxable year of loss.

SEC. 16. Section 18510 of the Revenue and Taxation Code is repealed.

SEC. 17. Section 18510 is added to the Revenue and Taxation Code, to read:

18510. (a) (1) The Franchise Tax Board shall revise the returns required to be filed pursuant to this article, Article 2 (commencing with Section 18601), Section 18633, Section 18633.5, and Article 3 (commencing with Section 23771) of Chapter 4 of Part 11, and the accompanying instructions for filing those returns, in a form and manner approved by the State Board of Equalization, to allow a person to report and pay qualified use tax in accordance with the provisions of Section 6452.1.

(2) Within 10 working days of receiving from the Franchise Tax Board the returns and instructions described in paragraph (1), the State Board of Equalization shall do either of the following:

(A) Approve the form and manner of the returns and notify the Franchise Tax Board of this approval.

(B) Submit comments to the Franchise Tax Board regarding changes to the returns that shall be incorporated before the State Board of Equalization approves the form and manner of the returns.

(b) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under this part.

(2) Qualified use tax as reported on the acceptable tax return, in accordance with Section 6452.1.

(c) The Franchise Tax Board shall transfer the qualified use tax received pursuant to Section 6452.1, and any information the State Board of Equalization deems necessary for its administration of the use tax, to the State Board of Equalization within 60 days from the date the use tax is received or the acceptable tax return is processed, whichever is later.

(d) This section shall be operative for returns filed for taxable years beginning on and after January 1, 2010.

SEC. 18. Section 19138 of the Revenue and Taxation Code is amended to read:

19138. (a) (1) A taxpayer subject to the tax imposed under Part 11 (commencing with Section 23001) with an understatement of tax for any taxable year shall be subject to the penalty imposed under this section if that understatement exceeds the greater of the following:

(A) One million dollars ($1,000,000).

(B) Twenty percent of the tax shown on an original return or shown on an amended return filed on or before the original or extended due date of the return for the taxable year.

(2) For taxpayers that are required to be included in a combined report under Section 25101 or authorized to be included in a combined report under Section 25101.15, the threshold amount prescribed in subparagraph (A) or subparagraph (B) of paragraph (1) shall apply to the aggregate amount of tax liability under Part 11 (commencing with Section 23001) for all taxpayers that are required to be or authorized to be included in a combined report.

(b) The penalty under this section shall be an amount equal to 20 percent of any understatement of tax. For purposes of this section, "understatement of tax" means the amount by which the tax imposed by Part 11 (commencing with Section 23001) exceeds the amount of tax shown on an original return or shown on an amended return filed on or before the original or extended due date of the return for the taxable year. For any taxable year beginning before January 1, 2008, the amount of tax paid on or before May 31, 2009, and shown on an amended return filed on or before May 31, 2009, shall be treated as the amount of tax shown on an original return for purposes of this section.

(c) The penalty imposed by this section shall be in addition to any other penalty imposed under Part 11 (commencing with Section 23001) or this part.

(d) Article 3 (commencing with Section 19031), relating to deficiency assessments, shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

(e) A refund or credit for any amounts paid to satisfy a penalty imposed under this section may be allowed only on the grounds that the amount of the penalty was not properly computed by the Franchise Tax Board.

(f) (1) No penalty shall be imposed under this section on any understatement to the extent that the understatement is attributable to a change in law that is enacted, promulgated, issued, or becomes final after the earlier of either of the following dates:

(A) The date the taxpayer files the return for the taxable year for which the change is operative.

(B) The extended due date for the return of the taxpayer for the taxable year for which the change is operative.

(2) For purposes of this subdivision, a "change of law" means a statutory change or an interpretation of law or rule of law by regulation, legal ruling of counsel, within the meaning of subdivision (b) of Section 11340.9 of the Government Code, or a published federal or California court decision.

(3) The Franchise Tax Board shall implement this subdivision in a reasonable manner.

(g) No penalty shall be imposed under this section to the extent that a taxpayer's understatement is attributable to the taxpayer's reasonable reliance on written advice of the Franchise Tax Board,

but only if the written advice was a legal ruling by the Chief Counsel, within the meaning of paragraph (1) of subdivision (a) of Section 21012.

(h) (1) This section shall apply to each taxable year beginning on or after January 1, 2003, for which the statute of limitations on assessment has not expired.

(2) The amendments made to this section by the act adding this paragraph shall apply to each taxable year beginning on or after January 1, 2010.

SEC. 19. Section 23101 of the Revenue and Taxation Code is amended to read:

23101. (a) "Doing business" means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(b) For taxable years beginning on or after January 1, 2011, a taxpayer is doing business in this state for a taxable year if any of the following conditions has been satisfied:

(1) The taxpayer is organized or commercially domiciled in this state.

(2) Sales, as defined in subdivision (e) or (f) of Section 25120 as applicable for the taxable year, of the taxpayer in this state exceed the lesser of five hundred thousand dollars ($500,000) or 25 percent of the taxpayer's total sales. For purposes of this paragraph, sales of the taxpayer include sales by an agent or independent contractor of the taxpayer. For purposes of this paragraph, sales in this state shall be determined using the rules for assigning sales under Section 25135 and subdivision (b) of Section 25136 and the regulations thereunder, as modified by regulations under Section 25137.

(3) The real property and tangible personal property of the taxpayer in this state exceed the lesser of fifty thousand dollars ($50,000) or 25 percent of the taxpayer's total real property and tangible personal property. The value of real and tangible personal property and the determination of whether property is in this state shall be determined using the rules contained in Sections 25129 to 25131, inclusive, and the regulations thereunder, as modified by regulation under Section 25137.

(4) The amount paid in this state by the taxpayer for compensation, as defined in subdivision (c) of Section 25120, exceeds the lesser of fifty thousand dollars ($50,000) or 25 percent of the total compensation paid by the taxpayer. Compensation in

this state shall be determined using the rules for assigning payroll contained in Section 25133 and the regulations thereunder, as modified by regulations under Section 25137.

(c) (1) The Franchise Tax Board shall annually revise the amounts in paragraphs (2), (3), and (4) of subdivision (b) in accordance with subdivision (h) of Section 17041.

(2) For purposes of the adjustment required by paragraph (1), subdivision (h) of Section 17041 shall be applied by substituting "2012" in lieu of "1988."

(d) The sales, property, and payroll of the taxpayer include the taxpayer's pro rata or distributive share of pass-through entities. For purposes of this subdivision, "pass-through entities" means a partnership or an "S" corporation.

SEC. 20. Section 24416 of the Revenue and Taxation Code is repealed.

SEC. 21. Section 24416.05 is added to the Revenue and Taxation Code, to read:

24416.05. (a) In addition to the modifications made by Section 24416, the deduction provided by Section 172 of the Internal Revenue Code, relating to net operating loss deduction, shall be modified as follows:

(1) Section 172(b)(1)(J) of the Internal Revenue Code, relating to certain losses attributable to federally declared disasters, shall not apply.

(2) Section 172(j) of the Internal Revenue Code, relating to rules relating to qualified disaster losses, shall not apply.

(b) This section shall be operative for taxable years beginning on or after January 1, 2011.

SEC. 22. Section 24416.9 of the Revenue and Taxation Code is repealed.

SEC. 23. Section 24416.10 of the Revenue and Taxation Code is repealed.

SEC. 24. Section 24416.20 is added to the Revenue and Taxation Code, to read:

24416.20. Except as provided in Sections 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to amount of carrybacks and carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (e).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall

be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in paragraph (1) of subdivision (e).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (e).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, "net loss" means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) For any taxable year in which the taxpayer has in effect a water's-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated corporation in a combined report whose income and apportionment factors would not have been taken into account if a water's-edge election under Section 25110 had been in effect for the taxable year in which the loss was incurred.

(d) Section 172(b)(1) of the Internal Revenue Code, relating to years to which the loss may be carried, is modified as follows:

(1) Net operating loss carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2013.

(2) A net operating loss attributable to taxable years beginning on or after January 1, 2013, shall be a net operating loss carryback to each of the two taxable years preceding the taxable year of the loss in lieu of the number of years provided therein.

(A) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, and before January 1, 2014, the amount of carryback to any taxable year shall not exceed 50 percent of the net operating loss.

(B) For a net operating loss attributable to a taxable year beginning on or after January 1, 2014, and before January 1, 2015, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.

(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2015, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.

(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the Internal Revenue Code, relating to special rules for REITs, and Section 172(b)(1)(E) of the Internal Revenue Code, relating to excess interest loss, and Section 172(h) of the Internal Revenue Code, relating to corporate equity reduction interest losses, shall apply as provided.

(4) A net operating loss carryback shall not be carried back to any taxable year beginning before January 1, 2011.

(e) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute "five taxable years" in lieu of "20 years" except as otherwise provided in paragraphs (2), (3), and (4).

(B) For a net operating loss for any income year beginning on or after January 1, 2000, and before January 1, 2008, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute "10 taxable years" in lieu of "20 taxable years."

(2) For any income year beginning before January 1, 2000, in the case of a "new business," the "five taxable years" referred to in paragraph (1) shall be modified to read as follows:

(A) "Eight taxable years" for a net operating loss attributable to the first taxable year of that new business.

(B) "Seven taxable years" for a net operating loss attributable to the second taxable year of that new business.

(C) "Six taxable years" for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 24416.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a corporation that was either of the following:

(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in an income year after the taxable year during which the corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.

(B) In receipt of assets acquired in a transaction that qualifies as a tax-free reorganization under Section 368(a)(1)(G) of the Internal Revenue Code.

(f) For purposes of this section:

(1) "Eligible small business" means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the income year.

(2) Except as provided in subdivision (g), "new business" means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) "Title 11 or similar case" shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or an "S" corporation, paragraphs (1) and (2) shall be applied to the partnership or "S" corporation.

(g) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property

described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months ("prior trade or business activity"), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer's (or any related person's) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) "Related person" shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) "Acquire" shall include any transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term "new business" shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as

further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) "Biopharmaceutical activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following:

(1) The amount of net operating loss incurred in any taxable year that may be carried forward to another taxable year.

(2) The amount of any loss carry forward that may be deducted in any taxable year.

(i) The provisions of Section 172(b)(1)(D) of the Internal Revenue Code, relating to bad debt losses of commercial banks, shall not be applicable.

(j) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(k) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(*l*) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 25. Section 24416.21 is added to the Revenue and Taxation Code, to read:

24416.21. (a) Notwithstanding Sections 24416, 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, 24416.7, and 24416.20 of this code and Section 172 of the Internal Revenue Code, no net operating loss deduction shall be allowed for any taxable year beginning on or after January 1, 2008, and before January 1, 2012.

(b) For any net operating loss or carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:

(1) By one year, for losses incurred in taxable years beginning on or after January 1, 2010, and before January 1, 2011.

(2) By two years, for losses incurred in taxable years beginning on or after January 1, 2009, and before January 1, 2010.

(3) By three years, for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.

(4) By four years, for losses incurred in taxable years beginning before January 1, 2008.

(c) Notwithstanding subdivision (a), a net operating loss deduction shall be allowed for carryback of a net operating loss attributable to a taxable year beginning on or after January 1, 2013.

(d) The disallowance of any net operating loss deduction for any taxable year beginning on or after January 1, 2008, and before January 1, 2010, pursuant to subdivision (a) shall not apply to a taxpayer with income subject to tax under this part of less than five hundred thousand dollars ($500,000) for the taxable year.

(e) (1) The disallowance of any net operating loss deduction for any taxable year beginning on or after January 1, 2010, and before January 1, 2012, pursuant to subdivision (a) shall not apply to a taxpayer with preapportioned income of less than three hundred thousand dollars ($300,000) for the taxable year.

(2) For purposes of this subdivision, “preapportioned income” means net income after state adjustments, before the application of the apportionment and allocation provisions of this part.

(3) For taxpayers that are required to be included in a combined report under Section 25101 or authorized to be included in a combined report under Section 25101.15, the amount prescribed in paragraph (1) shall apply to the aggregate amount of

preapportioned income for all members included in a combined report.

(f) Notwithstanding subdivision (a), this section shall not apply to a taxpayer that ceased to do business or has a final taxable year ending prior to August 28, 2008, that sold or transferred substantially all of its assets resulting in a gain on sale during a taxable year ending prior to August 28, 2008, for which the gain could be offset with existing net operating loss deductions and the sale or transfer occurred pursuant to a plan of reorganization under Chapter 11 of Title 11 of the United States Code. An amended tax return claiming net operating loss deductions allowed pursuant to this subdivision shall be treated as a timely filed original return.

(g) The Legislature finds and declares that the addition of subdivision (f) to this section by the act adding this subdivision fulfills a statewide public purpose by providing necessary tax relief for a taxpayer that ceased to do business or has a final taxable year ending prior to August 28, 2008, that sold or transferred substantially all of its assets resulting in a gain or sale during a taxable year prior to August 28, 2008, for which the gain could be offset with existing net operating loss deductions and the sale or transfer occurred pursuant to a plan of reorganization under Chapter 11 of Title 11 of the United States Code, in order to ensure that these taxpayers are not permanently denied the net operating loss deduction.

SEC. 26. Section 24416.22 is added to the Revenue and Taxation Code, to read:

24416.22. Notwithstanding Section 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss attributable to a taxable year beginning on or after January 1, 2008, shall be a net operating carryover to each of the 20 taxable years following the year of the loss, and a net operating loss attributable to a taxable year beginning on or after January 1, 2013, shall also be a net operating loss carryback to each of the two taxable years preceding the taxable year of loss.

SEC. 27. Section 25136 of the Revenue and Taxation Code, as amended by Section 13 of Chapter 17 of the 3rd Extraordinary Session of the Statutes of 2009, is amended to read:

25136. (a) For taxable years beginning before January 1, 2011, and for taxable years beginning on or after January 1, 2011, for which Section 25128.5 is operative and an election under

subdivision (a) of Section 25128.5 has not been made, sales, other than sales of tangible personal property, are in this state if:

(1) The income-producing activity is performed in this state; or

(2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(3) This subdivision shall apply, and subdivision (b) shall not apply, for any taxable year beginning on or after January 1, 2011, for which Section 25128.5 is not operative for any taxpayer subject to the tax imposed under this part.

(b) For taxable years beginning on or after January 1, 2011:

(1) Sales from services are in this state to the extent the purchaser of the service received the benefit of the service in this state.

(2) Sales from intangible property are in this state to the extent the property is used in this state. In the case of marketable securities, sales are in this state if the customer is in this state.

(3) Sales from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.

(4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.

(5) (A) If Section 25128.5 is operative, then this subdivision shall apply in lieu of subdivision (a) for any taxable year for which an election has been made under subdivision (a) of Section 25128.5.

(B) If Section 25128.5 is not operative, then this subdivision shall not apply and subdivision (a) shall apply for any taxpayer subject to the tax imposed under this part.

(C) Notwithstanding subparagraphs (A) or (B), this subdivision shall apply for purposes of paragraph (2) of subdivision (b) of Section 23101.

(c) The Franchise Tax Board may prescribe those regulations as necessary or appropriate to carry out the purposes of subdivision (b).

SEC. 28. Section 25136 of the Revenue and Taxation Code, as added by Section 14 of Chapter 10 of the 3rd Extraordinary Session of the Statutes of 2009, is repealed.

SEC. 29. Section 25136 of the Revenue and Taxation Code, as added by Section 14 of Chapter 17 of the 3rd Extraordinary Session of the Statutes of 2009, is repealed.

SEC. 30. Section 30354.7 is added to the Revenue and Taxation Code, to read:

30354.7. (a) A collection cost recovery fee shall be imposed on any person that fails to pay an amount of tax, interest, penalty, or other amount due and payable under this part. The collection cost recovery fee shall be in an amount equal to the board's costs for collection, as reasonably determined by the board. The collection cost recovery fee shall be imposed only if the board has mailed its demand notice, to that person for payment, that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

(b) Interest shall not accrue with respect to the collection cost recovery fee provided by this section.

(c) The collection cost recovery fee imposed pursuant to this section shall be collected in the same manner as the collection of any other tax imposed by this part.

(d) (1) If the board finds that a person's failure to pay any amount under this part is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the collection cost recovery fee provided by this section.

(2) Any person seeking to be relieved of the collection cost recovery fee shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief.

(e) Subdivision (a) shall be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

(f) Collection cost recovery fee revenues shall be deposited in the same manner as revenues derived from any other tax imposed by this part.

SEC. 31. Section 32390 is added to the Revenue and Taxation Code, to read:

32390. (a) A collection cost recovery fee shall be imposed on any person that fails to pay an amount of tax, interest, penalty, or other amount due and payable under this part. The collection cost

recovery fee shall be in an amount equal to the board's costs for collection, as reasonably determined by the board. The collection cost recovery fee shall be imposed only if the board has mailed its demand notice, to that person for payment, that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

(b) Interest shall not accrue with respect to the collection cost recovery fee provided by this section.

(c) The collection cost recovery fee imposed pursuant to this section shall be collected in the same manner as the collection of any other tax imposed by this part.

(d) (1) If the board finds that a person's failure to pay any amount under this part is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the collection cost recovery fee provided by this section.

(2) Any person seeking to be relieved of the collection cost recovery fee shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief.

(e) Subdivision (a) shall be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

(f) Collection cost recovery fee revenues shall be deposited in the same manner as revenues derived from any other tax imposed by this part.

SEC. 32. Section 38577 is added to the Revenue and Taxation Code, to read:

38577. (a) A collection cost recovery fee shall be imposed on any person that fails to pay an amount of tax, interest, penalty, or other amount due and payable under this part. The collection cost recovery fee shall be in an amount equal to the board's costs for collection, as reasonably determined by the board. The collection cost recovery fee shall be imposed only if the board has mailed its demand notice, to that person for payment, that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

(b) Interest shall not accrue with respect to the collection cost recovery fee provided by this section.

(c) The collection cost recovery fee imposed pursuant to this section shall be collected in the same manner as the collection of any other tax imposed by this part.

(d) (1) If the board finds that a person's failure to pay any amount under this part is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the collection cost recovery fee provided by this section.

(2) Any person seeking to be relieved of the collection cost recovery fee shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief.

(e) Subdivision (a) shall be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

(f) Collection cost recovery fee revenues shall be deposited in the same manner as revenues derived from any other tax imposed by this part.

SEC. 33. Section 40168 is added to the Revenue and Taxation Code, to read:

40168. (a) A collection cost recovery fee shall be imposed on any person that fails to pay an amount of surcharge, interest, penalty, or other amount due and payable under this part. The collection cost recovery fee shall be in an amount equal to the board's costs for collection, as reasonably determined by the board. The collection cost recovery fee shall be imposed only if the board has mailed its demand notice, to that person for payment, that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

(b) Interest shall not accrue with respect to the collection cost recovery fee provided by this section.

(c) The collection cost recovery fee imposed pursuant to this section shall be collected in the same manner as the collection of any other surcharge imposed by this part.

(d) (1) If the board finds that a person's failure to pay any amount under this part is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the

person shall be relieved of the collection cost recovery fee provided by this section.

(2) Any person seeking to be relieved of the collection cost recovery fee shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief.

(e) Subdivision (a) shall be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

(f) Collection cost recovery fee revenues shall be deposited in the same manner as revenues derived from any other surcharge imposed by this part.

SEC. 34. Section 41127.8 is added to the Revenue and Taxation Code, to read:

41127.8. (a) A collection cost recovery fee shall be imposed on any person that fails to pay an amount of surcharge, interest, penalty, or other amount due and payable under this part. The collection cost recovery fee shall be in an amount equal to the board's costs for collection, as reasonably determined by the board. The collection cost recovery fee shall be imposed only if the board has mailed its demand notice, to that person for payment, that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

(b) Interest shall not accrue with respect to the collection cost recovery fee provided by this section.

(c) The collection cost recovery fee imposed pursuant to this section shall be collected in the same manner as the collection of any other surcharge imposed by this part.

(d) (1) If the board finds that a person's failure to pay any amount under this part is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the collection cost recovery fee provided by this section.

(2) Any person seeking to be relieved of the collection cost recovery fee shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief.

(e) Subdivision (a) shall be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

(f) Collection cost recovery fee revenues shall be deposited in the same manner as revenues derived from any other surcharge imposed by this part.

SEC. 35. Section 43449 is added to the Revenue and Taxation Code, to read:

43449. (a) A collection cost recovery fee shall be imposed on any person that fails to pay an amount of tax, interest, penalty, or other amount due and payable under this part. The collection cost recovery fee shall be in an amount equal to the board's costs for collection, as reasonably determined by the board. The collection cost recovery fee shall be imposed only if the board has mailed its demand notice, to that person for payment, that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

(b) Interest shall not accrue with respect to the collection cost recovery fee provided by this section.

(c) The collection cost recovery fee imposed pursuant to this section shall be collected in the same manner as the collection of any other tax imposed by this part.

(d) (1) If the board finds that a person's failure to pay any amount under this part is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the collection cost recovery fee provided by this section.

(2) Any person seeking to be relieved of the collection cost recovery fee shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief.

(e) Subdivision (a) shall be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

(f) Collection cost recovery fee revenues shall be deposited in the same manner as revenues derived from any other tax imposed by this part.

SEC. 36. Section 45610 is added to the Revenue and Taxation Code, to read:

45610. (a) A collection cost recovery fee shall be imposed on any person that fails to pay an amount of fee, interest, penalty, or other amount due and payable under this part. The collection cost recovery fee shall be in an amount equal to the board's costs for

collection, as reasonably determined by the board. The collection cost recovery fee shall be imposed only if the board has mailed its demand notice, to that person for payment, that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

(b) Interest shall not accrue with respect to the collection cost recovery fee provided by this section.

(c) The collection cost recovery fee imposed pursuant to this section shall be collected in the same manner as the collection of any other fee imposed by this part.

(d) (1) If the board finds that a person's failure to pay any amount under this part is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the collection cost recovery fee provided by this section.

(2) Any person seeking to be relieved of the collection cost recovery fee shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief.

(e) Subdivision (a) shall be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

(f) Collection cost recovery fee revenues shall be deposited in the same manner as revenues derived from any other fee imposed by this part.

SEC. 37. Section 46466 is added to the Revenue and Taxation Code, to read:

46466. (a) A collection cost recovery fee shall be imposed on any person that fails to pay an amount of fee, interest, penalty, or other amount due and payable under this part. The collection cost recovery fee shall be in an amount equal to the board's costs for collection, as reasonably determined by the board. The collection cost recovery fee shall be imposed only if the board has mailed its demand notice, to that person for payment, that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

(b) Interest shall not accrue with respect to the collection cost recovery fee provided by this section.

(c) The collection cost recovery fee imposed pursuant to this section shall be collected in the same manner as the collection of any other fee imposed by this part.

(d) (1) If the board finds that a person's failure to pay any amount under this part is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the collection cost recovery fee provided by this section.

(2) Any person seeking to be relieved of the collection cost recovery fee shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief.

(e) Subdivision (a) shall be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

(f) Collection cost recovery fee revenues shall be deposited in the same manner as revenues derived from any other fee imposed by this part.

SEC. 38. Section 50138.8 is added to the Revenue and Taxation Code, to read:

50138.8. (a) A collection cost recovery fee shall be imposed on any person that fails to pay an amount of fee, interest, penalty, or other amount due and payable under this part. The collection cost recovery fee shall be in an amount equal to the board's costs for collection, as reasonably determined by the board. The collection cost recovery fee shall be imposed only if the board has mailed its demand notice, to that person for payment, that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

(b) Interest shall not accrue with respect to the collection cost recovery fee provided by this section.

(c) The collection cost recovery fee imposed pursuant to this section shall be collected in the same manner as the collection of any other fee imposed by this part.

(d) (1) If the board finds that a person's failure to pay any amount under this part is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the

person shall be relieved of the collection cost recovery fee provided by this section.

(2) Any person seeking to be relieved of the collection cost recovery fee shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief.

(e) Subdivision (a) shall be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

(f) Collection cost recovery fee revenues shall be deposited in the same manner as revenues derived from any other fee imposed by this part.

SEC. 39. Section 55211 is added to the Revenue and Taxation Code, to read:

55211. (a) A collection cost recovery fee shall be imposed on any person that fails to pay an amount of fee, interest, penalty, or other amount due and payable under this part. The collection cost recovery fee shall be in an amount equal to the board's costs for collection, as reasonably determined by the board. The collection cost recovery fee shall be imposed only if the board has mailed its demand notice, to that person for payment, that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

(b) Interest shall not accrue with respect to the collection cost recovery fee provided by this section.

(c) The collection cost recovery fee imposed pursuant to this section shall be collected in the same manner as the collection of any other fee imposed by this part.

(d) (1) If the board finds that a person's failure to pay any amount under this part is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the collection cost recovery fee provided by this section.

(2) Any person seeking to be relieved of the collection cost recovery fee shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief.

(e) Subdivision (a) shall be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

(f) Collection cost recovery fee revenues shall be deposited in the same manner as revenues derived from any other fee imposed by this part.

SEC. 40. Section 60495 is added to the Revenue and Taxation Code, to read:

60495. (a) A collection cost recovery fee shall be imposed on any person that fails to pay an amount of tax, interest, penalty, or other amount due and payable under this part. The collection cost recovery fee shall be in an amount equal to the board's costs for collection, as reasonably determined by the board. The collection cost recovery fee shall be imposed only if the board has mailed its demand notice, to that person for payment, that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.

(b) Interest shall not accrue with respect to the collection cost recovery fee provided by this section.

(c) The collection cost recovery fee imposed pursuant to this section shall be collected in the same manner as the collection of any other tax imposed by this part.

(d) (1) If the board finds that a person's failure to pay any amount under this part is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the collection cost recovery fee provided by this section.

(2) Any person seeking to be relieved of the collection cost recovery fee shall file with the board a statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief.

(e) Subdivision (a) shall be operative with respect to a demand notice for payment which is mailed on or after January 1, 2011.

(f) Collection cost recovery fee revenues shall be deposited in the same manner as revenues derived from any other tax imposed by this part.

SEC. 41. No inference shall be drawn from the enactment of the amendments made to Section 25136 of the Revenue and Taxation Code by this act with respect to the extent to which the rules for assigning sales, other than sales of tangible personal property, contained in subdivision (a) of Section 25136 of the Revenue and Taxation Code, before and after such amendment,

are intended to properly reflect the market for the activities of the taxpayer giving rise to business income. The rules contained in subdivisions (a) and (b) of Section 25136 of the Revenue and Taxation Code are intended to accomplish the goal of proper market reflection in the sales factor numerator.

SEC. 42. The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 43. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 44. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the current state budgetary requirements at the earliest possible time, it is necessary that this act go into immediate effect.

Approved _____, 2010

_____

Governor